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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UTE INDIAN TRIBE OF THE UINTAH AND
OURAY INDIAN RESERVATION, a
federally recognized Indian Tribe,

Plaintiff,

v.

DAVID URE, MICHELLE MCCONKIE,
MICHAEL STYLER, SPENCER COX,
UTAH SCHOOL and INSTITUTIONAL
TRUST LANDS ADMINISTRATION,

Defendants.

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' JOINT MOTION
FOR SCHEDULING CONFERENCE**

Civil Case No.2;23-cv-295

Judge David B. Barlow
Magistrate Judge Cecilia M. Romero

Plaintiff, the Ute Indian Tribe of the Uintah and Ouray Reservation (“Tribe”), by and through counsel, hereby responds to the Defendants’ Joint Motion for Scheduling Order (“Motion”), as follows:

After filing their Motion for Clarification (which essentially asks the Court to reconsider its Order on Motion to Dismiss and dismiss additional claims against Defendants), Defendants have now filed their Motion for Scheduling Order claiming that “[b]ecause Plaintiff did not amend, and the Court has not issued a ruling on the [Motion for Clarification] or the requests for extensions of time to answer, the Defendants are unclear about the posture of the case and their obligations.”

The Tribe, as indicated in its Response to the Motion for Clarification, invites an order from the Court clarifying which claims against Defendants remain. But until the Court issues such an order, and all parties understand the scope and contours of the Court’s order, the parties could not effectively go on to the next stages of this case—discovery, deadlines for motions to amend or add parties, etc. Likewise, while the Tribe does not oppose a scheduling conference at the appropriate time, a scheduling conference should be held *after* the Court issues its clarifying order so that the Tribe may, if necessary, proceed with an amended complaint, and the parties can engage in discovery.

As set forth in its Response to Motion for Clarification, the Tribe does *not* agree with Defendants that only a conspiracy claim against Defendant Ure remains. A fair reading of the Order indicates that Plaintiff’s federal civil rights claims (Count I) and declaratory and injunctive relief for federal civil rights claims (Count II) against Defendants Cox, Styler, McConkie, and Ure survive.

As of today, the posture of this case is clear: The Court has under advisement a fully briefed Motion for Clarification of its prior order granting in part and denying in part Defendants’

Motion to Dismiss on the pleadings. The Court will issue the order on the Motion for Clarification when that order is ready, and the Defendants need to patiently wait until that order is issued before the parties can schedule deadlines for the phases of this case that come *after* that order is issued. Accordingly, the Tribe does not view Defendant's Motion for a Scheduling order to be necessary or proper.

Once the Court issues its order on the pending Motion for Clarification, the Tribe believes that a scheduling order would be proper, and thinks it likely that the Court would direct the parties to propose a scheduling order at that point.

Dated: August 27, 2024.

PATTERSON EARNHART REAL BIRD & WILSON LLP

/s/ Linda F. Cooper

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